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DARBY & DARBY P.C.
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OFFICE OF PETITIONS

In re Application of
Shiro Majima et al.
Application No. 10/658,086
Filed: September 9, 2003
Attorney Docket No. 09868/000M893-US0

DECISION REFUSING STATUS
UNDER 37 CFR 1.47(a)

This is in response to the petition filed under 37 CFR 1.47(a) on September 9, 2003.

The petition is **DISMISSED**.

Rule 47 applicant is given TWO MONTHS from the mailing date of this decision to respond, correcting the below-noted deficiencies. Any response should be entitled "Request for Reconsideration of Petition Under 37 CFR 1.47(a), and may include an oath or declaration executed by the inventor. **Failure to respond will result in abandonment of the application.** Any extensions of time will be governed by 37 CFR 1.136(a).

The above-identified application was filed on September 9, 2003, with a declaration naming Shiro Majima and Keiri Yoshioka as joint inventors and signed by inventor Shiro Majima only. The present petition was also filed on September 9, 2003 requesting status under 37 CFR 1.47 claiming that joint inventor Yoshioka cannot be located or refuses to execute the declaration.

A grantable petition under 37 CFR 1.47(a) requires: (1) proof that the non-signing inventor cannot be reached or refuses to sign the oath or declaration after having been presented with the application papers (specification, claims and drawings); (2) an acceptable oath or declaration in compliance with 35 U.S.C. §§ 115 and 116; (3) the petition fee; and (4) a statement of the last known address of the non-signing inventor. Applicant lacks items (1) set forth above.

In regards to item (1), petitioners have not provided sufficient proof that a copy of the complete application (specification, including claims, drawings, if any, and the declaration) was sent to the non-signing inventor.

A statement made by the attorney of record indicates that the declaration and assignment were sent by the assignee to Mr. Yoshioka and that no reply was received and further that the assignee phoned Mr. Yoshioka on two occasions in August 2003 and that no answer was received. The evidence presented is not clear as to whether the phone calls made to Mr. Yoshioka were made to a working phone number or just that Mr. Yoshioka has not responded to the attempts made by the assignee to have the declaration executed. While the evidence presented is not sufficient to show that Mr. Yoshioka had the benefit of seeing the application, it is stronger than the fact that Mr. Yoshioka cannot be located, since no proof has been presented to that end.

Petitioners may show proof that a copy of the application was sent or given to the non-

signing inventor for review by providing a copy of the cover letter transmitting the application papers to the non-signing inventor or details given in an affidavit or declaration of facts by a person having first hand knowledge of the details.

Likewise, before a *bona fide* refusal can be shown, the non-signing inventor must have been given an opportunity to review the application. Therefore, petitioners must show proof that the non-signing inventor refuses to sign the declaration after being sent or given a copy of the application papers. If there is a written refusal, petitioners should submit a copy of that refusal with any renewed petition. If the refusal was made orally to a person, then that person must provide details of the refusal in an affidavit or declaration of facts.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Assistant Commissioner for Patents
 Box DAC
 Washington, D.C. 20231

By FAX: (703) 872-9306

Telephone inquiries concerning this matter may be directed to the undersigned Petitions Attorney at (703)305-4497.


Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions